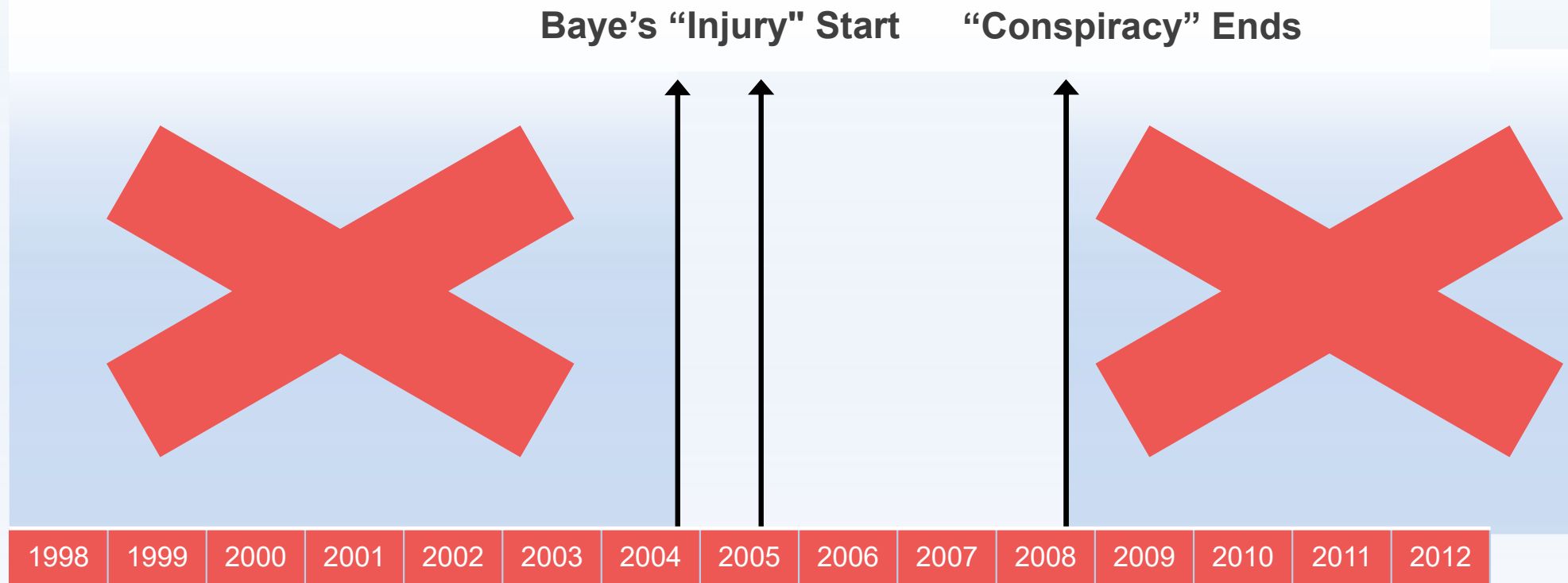


ATTACHMENT A

Damage Period Is Limited



A Conspiracy of Competitors

1 Short Term Measures

2 Exports

3 Henhouse Density

4 Backfilling Ban

A Conspiracy of Competitors

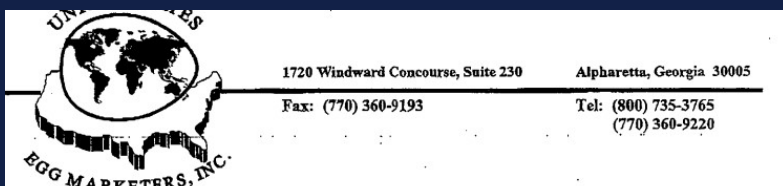
1 Short Term Measures

2 Exports

3 Henhouse Density

4 Backfilling Ban

Nominal Damages for Exports and Short-Term Measures



- The Urmr Barry Midwest Large quote increased by 40 cents per dozen during the period of filling this export. You might say that the market was primed and ready for increasing prices regardless of the export. Well let's consider the fact that we currently have approximately the same number of hens this year as we had a year ago. Last year's market increased by 12 cents per dozen for the Thanksgiving market. We must conclude that this export provided major financial benefits.

- Since UEP assumed the management of USEM, in the fall of 2000, we sold five (5) sizable exports prior to the recent sale. We had calculated past export benefits of being worth anywhere from as little as 6 cents per dozen to as much as 24 cents per dozen during the period of delivery of each export. The recent export exceeded any of past history and exceeded our expectations for this year. We must therefore conclude that this recent export was a major financial boost to all shell egg producers that market eggs at prices in relationship to the Urmr Barry benchmark quote.

Plaintiff Ex. 555

Nominal Damages for Exports and Short-Term Measures

Industry Statistics

SUPPLY - DEMAND PRICE RELATIONSHIP

With an annual increase in population of approximately one percent (1%), the first 2 to 3 million hens over the same period the previous year should not impact the price if all the demand factors are the same.

Supply Result on Price
During High Demand Period

Million Hens Over or Under Same
Period Last Year

Supply Result on Price
During Low Demand Period

+23¢ (+6¢)

- 5,000,000 Hens

+16¢ (5¢)

Plaintiff Ex. 591

Supply Result on Price During High Demand Period	Million Hens Over or Under Same Period Last Year	Supply Result on Price During Low Demand Period
+23¢ (+6¢)	- 5,000,000 Hens	+16¢ (5¢)
+17¢ (+5¢)	- 4,000,000	+11¢ (4¢)
+12¢ (+4¢)	- 3,000,000	+7¢ (3¢)
+8¢ (+3¢)	- 2,000,000	+4¢ (2¢)
+5¢ (+2¢)	- 1,000,000	+2¢
+3¢ (+2¢)	+ 1,000,000	-0¢

Reasonable Damages

- Each Plaintiff is entitled to recover for all damages to its business or property that were a ***direct result*** of the conduct that you previously found to be unlawful.
- The purpose of damages is to put an injured plaintiff as near as possible in the position where it would have been without the conspiracy.
- The jury is permitted to make a “just and reasonable estimate.”
- The estimate must have a reasonable basis in the evidence. The estimate must be based on reasonable assumptions.
- Certainty or precision is not required.

Reasonable Damages

A party's financial condition, size, or status as a public company or a private company should not influence your verdict.

Reasonable Damages

- Each Plaintiff is entitled to recover for all damages to its business or property that were a ***direct result*** of the conduct that you previously found to be unlawful.
- The purpose of damages is to put an injured plaintiff as near as possible in the position where it would have been without the conspiracy.
- The jury is permitted to make a “just and reasonable estimate.”
- The estimate must have a reasonable basis in the evidence. The estimate must be based on reasonable assumptions.
- Certainty or precision is not required.

Reasonable Damages

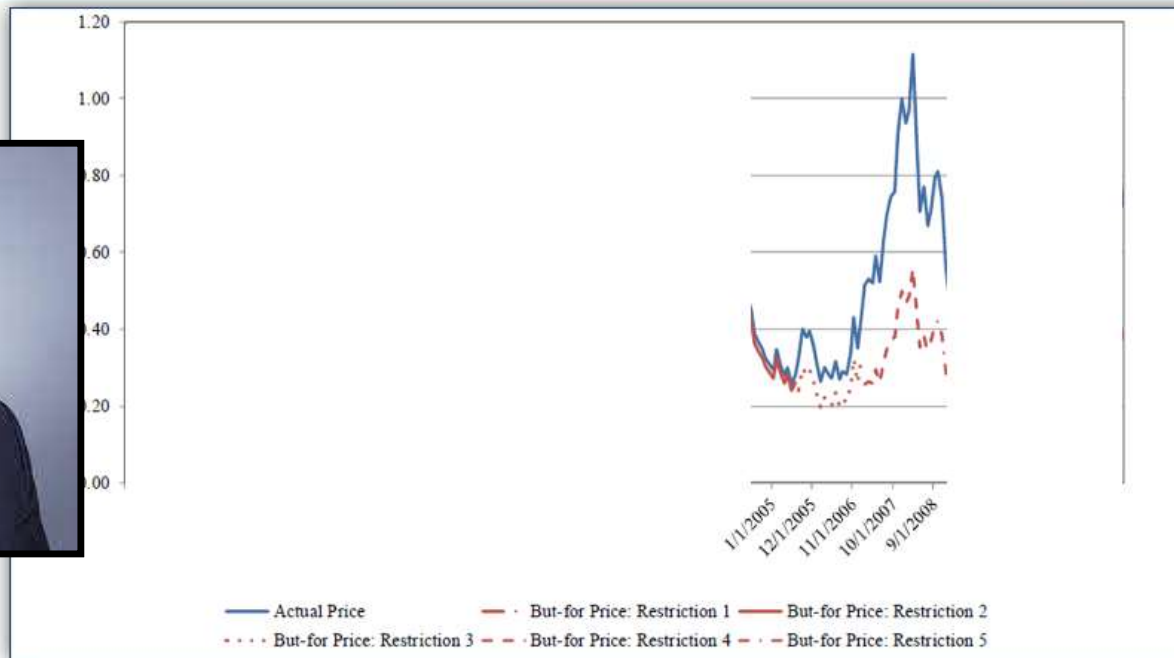
The proper way to calculate the amount damages is to determine the difference between:

- the prices that each Plaintiff actually paid; and
- the prices that each Plaintiff would have paid without an agreement to restrict supply.

The difference is the overcharge.

Overcharges from The UEP Certified Program

Actual Price v. But-for Price:
UB Liquid Eggs, Whole, Custom Pack, Pasteurized, Standard

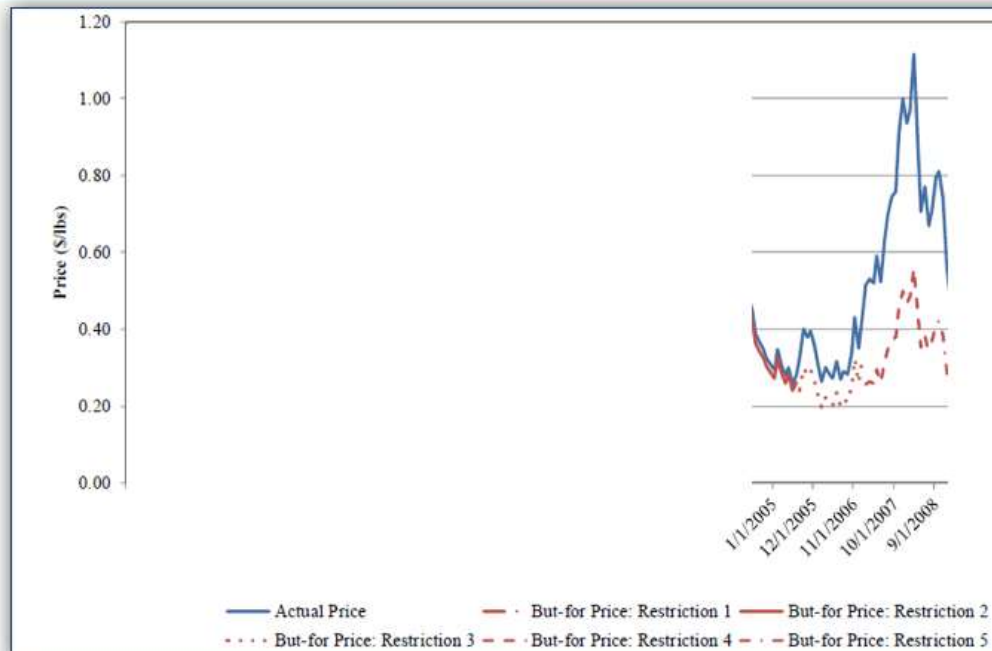


Source: Bayer Rep. Appx. 4, pg. 19

13

Overcharges from The UEP Certified Program

Actual Price v. But-for Price:
UB Liquid Eggs, Whole, Custom Pack, Pasteurized, Sta



Source: Baye Rep. Appx. 4, pg. 19



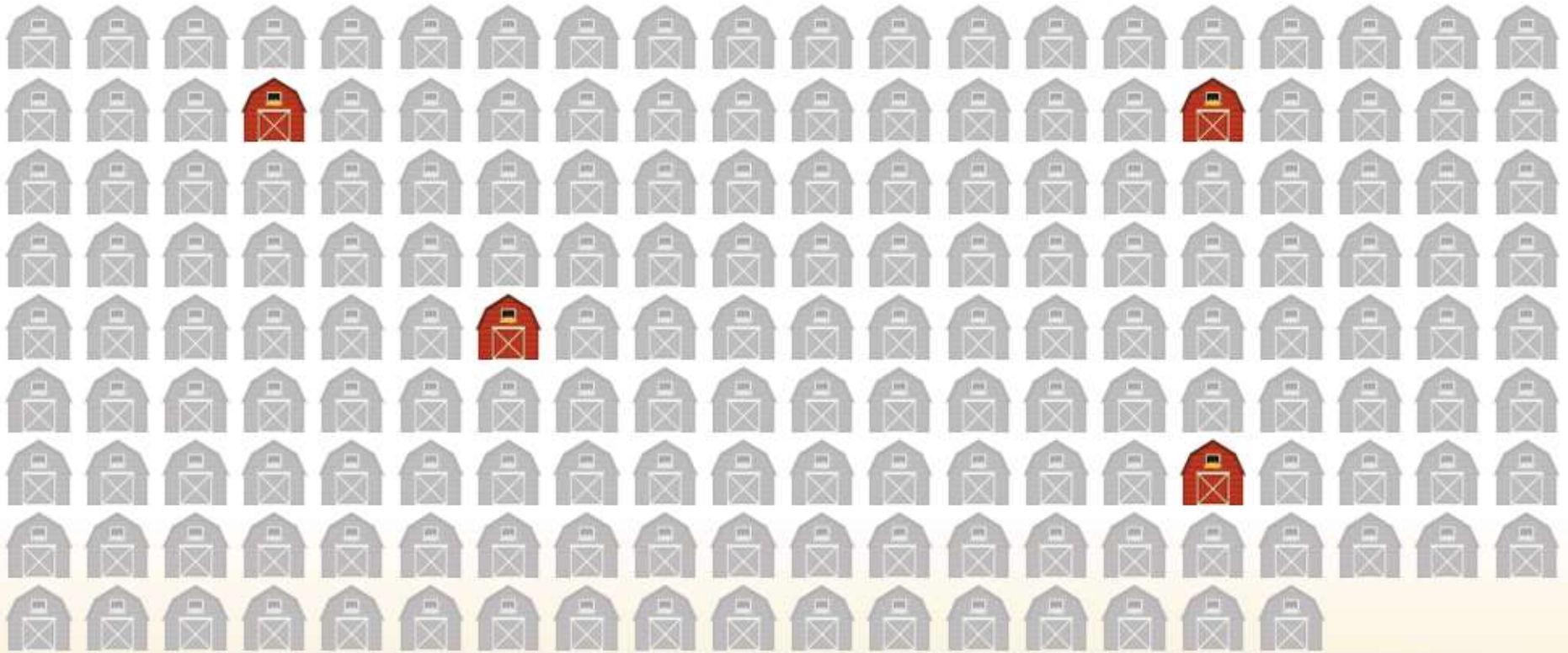
13

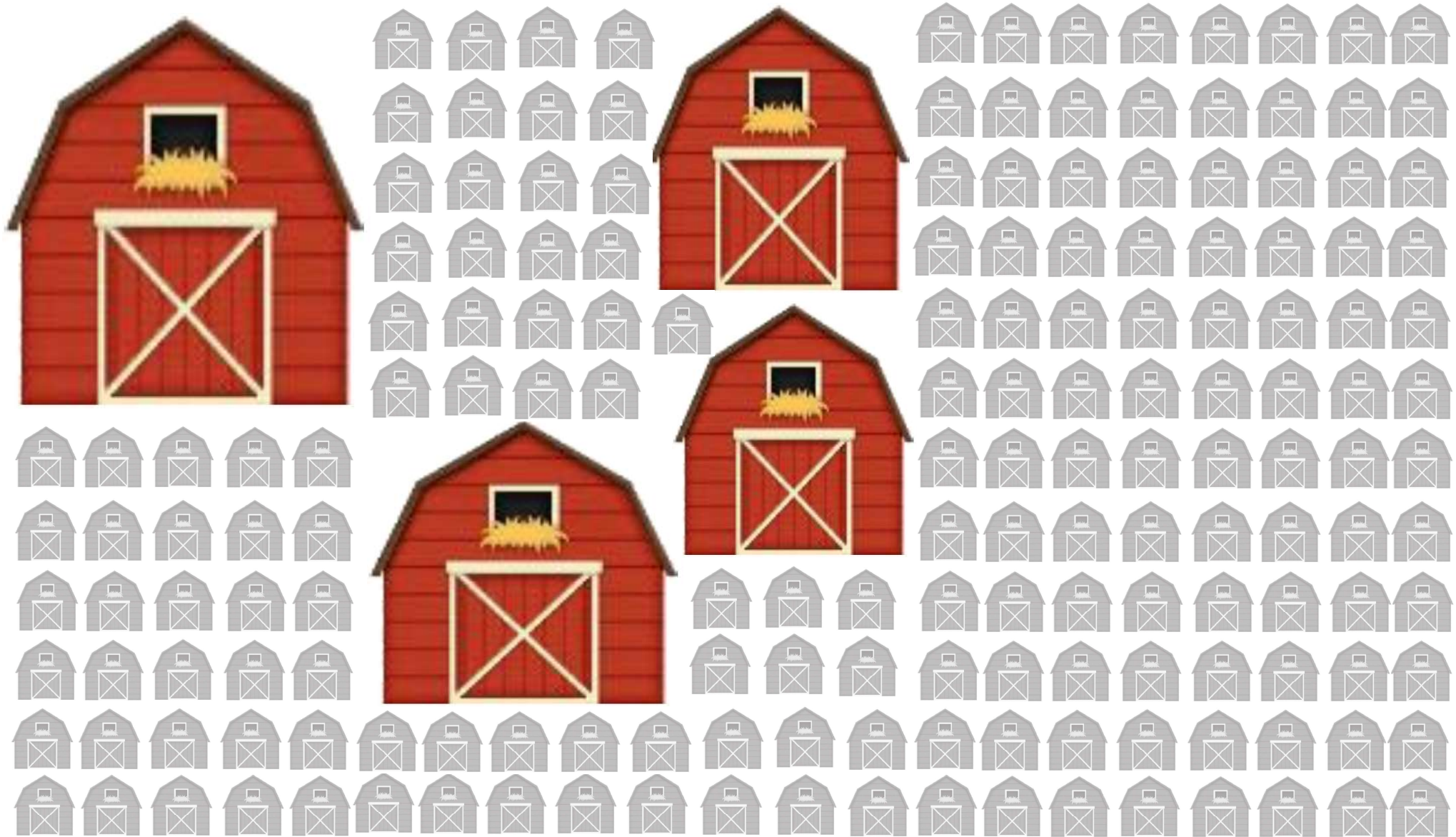
Plaintiffs' Total Purchases and Overcharges (Main Specification Oct. 2004 through Dec. 2008)

	Purchases from Rose Acre and Wabash Valley	Overcharges
Kraft	\$70,803,605	\$18,329,288
Kellogg	\$15,088,100	\$4,605,380
General Mills	\$3,948,967	\$1,305,612
Nestle	\$6,577,046	\$1,156,262
Total:	\$96,417,718	\$25,396,542

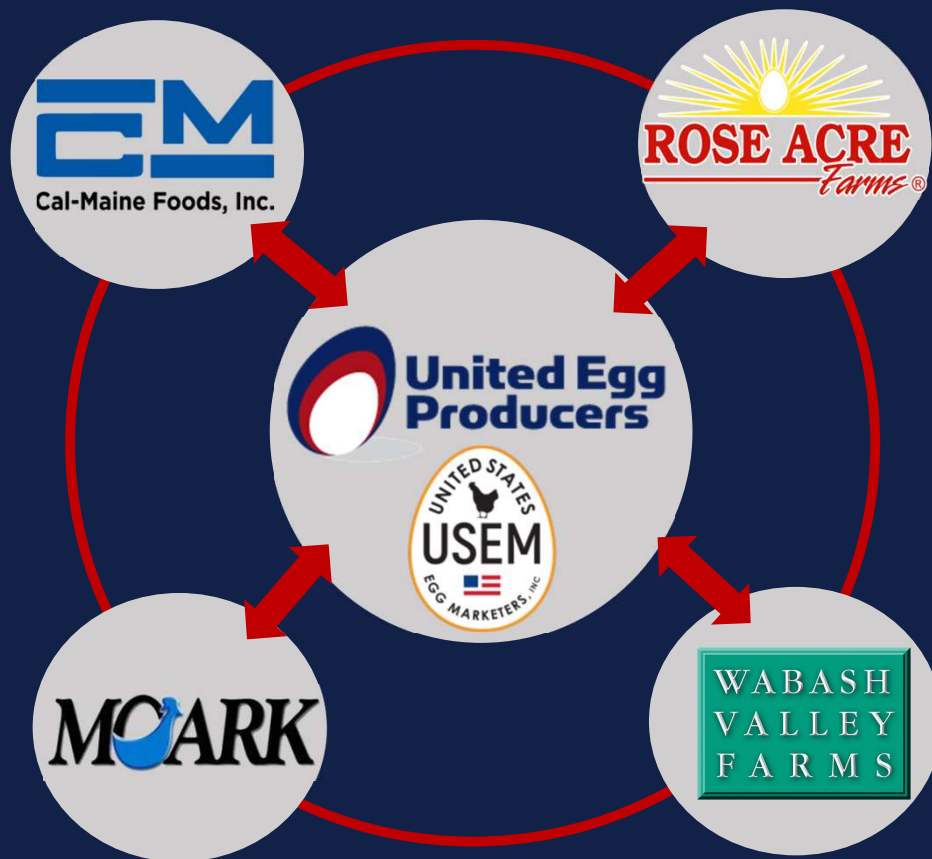
Only 4 Producers Found To Be In The Conspiracy

Remaining: **4 Producers**





The Conspiracy



Defendants Are Responsible for the Consequences of Their Actions

“I didn’t back out any of the participants’ individual contributions.
I’m looking at the ... entire certification program.”

“The point ... is because the program exists,
prices are going to be higher.”

“If the program wasn’t hatched, no one could have joined it.
So it was the hatching of the certified program that
provided a vehicle for people to join.”

Defendants Are Responsible for the Consequences of Their Actions

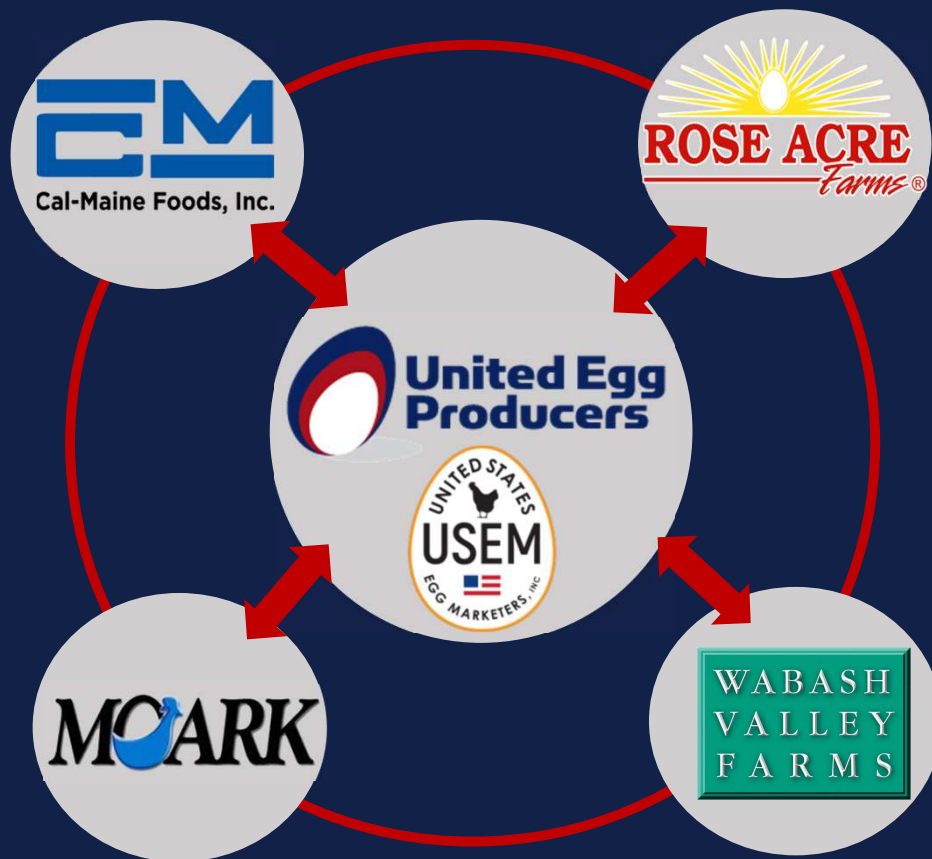
The Plaintiffs must prove:

The injuries for which the Plaintiffs are seeking damages were caused by the conspiracy that you previously found, as opposed to any other factors.

The damages must be the ***direct result*** of the conduct you previously found to be unlawful.

You may not award damages for an injury caused by other factors.

The Conspiracy



Defendants Are Responsible for the Consequences of Their Actions



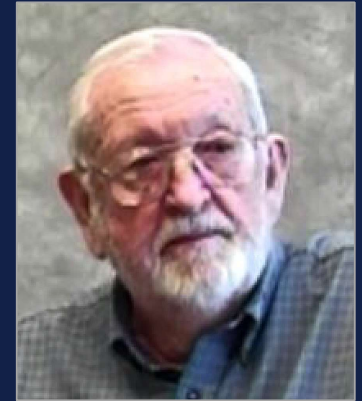
Al Pope



Gene Gregory



Linda Reickard



Don Bell

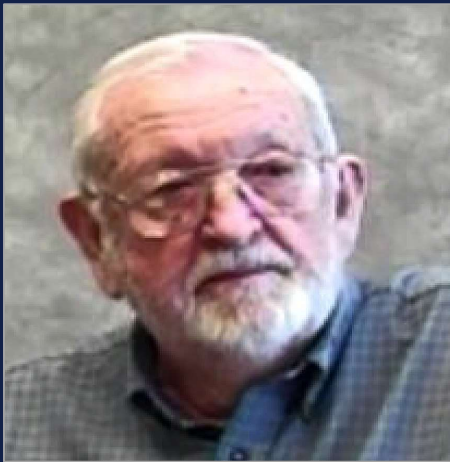
(Poultry Economic Consultant)

“UEP’s ... claim to fame was how they help[ed] producers figure out how to make more money with their business going forward.”



-Marcus Rust (Tr. 4433)

Defendants Are Responsible for the Consequences of Their Actions



Don Bell

Q: Based on your years of experience being affiliated with UEP, would it be fair to say that *one of the things that UEP did was to try to persuade its members to manage egg supply?*

A: *Yes.*

Bell Dep. 32:17-21

Defendants Are Responsible for the Consequences of Their Actions

**SPECIAL CALLED
UEP MARKETING CONFERENCE CALL
September 24, 2001**

Gene Gregory said that the UEP staff had been working on an idea that would encourage members to take one bird out of each cage until a total of 5% of the house capacity had been reached.

Plaintiff Ex. 227


Defendants Are Responsible for the Consequences of Their Actions

**“What Better Time to Reduce
Cage Density and**

**“What Better Time to Reduce
Cage Density and**

Put Money In Your Pocket!!!

Commentary – Al Pope



p start by reducing the cage density to
Guidelines. This action may be a
to the Hatch & Molting Plan as
mittee.

g the nations flock size by 5% could be
achieved if this option best suits your facilities and marketing plan. If at least
50% of the industry took thee actions Producers could make a dollar to two a
bird in 2002 instead of the projected losses.....substantial losses at that!!!

Plaintiff
Ex. 223

Defendants Are Responsible for the Consequences of Their Actions

5. **Cost Recovery:** It is disappointing to hear from some of you that your customer is unwilling to pay your increased costs to meet these guidelines. We still recommend that you only put the **Animal Care Certified** logo on the cartons of companies willing to pay the costs.

You should not get discouraged. We believe with 225 million hens committed to the program and the trading of AHC (Animal Husbandry Certified) eggs, and the flock reduction that has begun to take effect, egg prices have and will continue to reflect the impact of these welfare guidelines.

GWG/ph

United Egg Producers

UEP Headquarters
Encourse • Suite 230 • Alpharetta, Georgia 30005
(770) 360-9220 • Fax (770) 360-7058

Animal Care Certified Companies

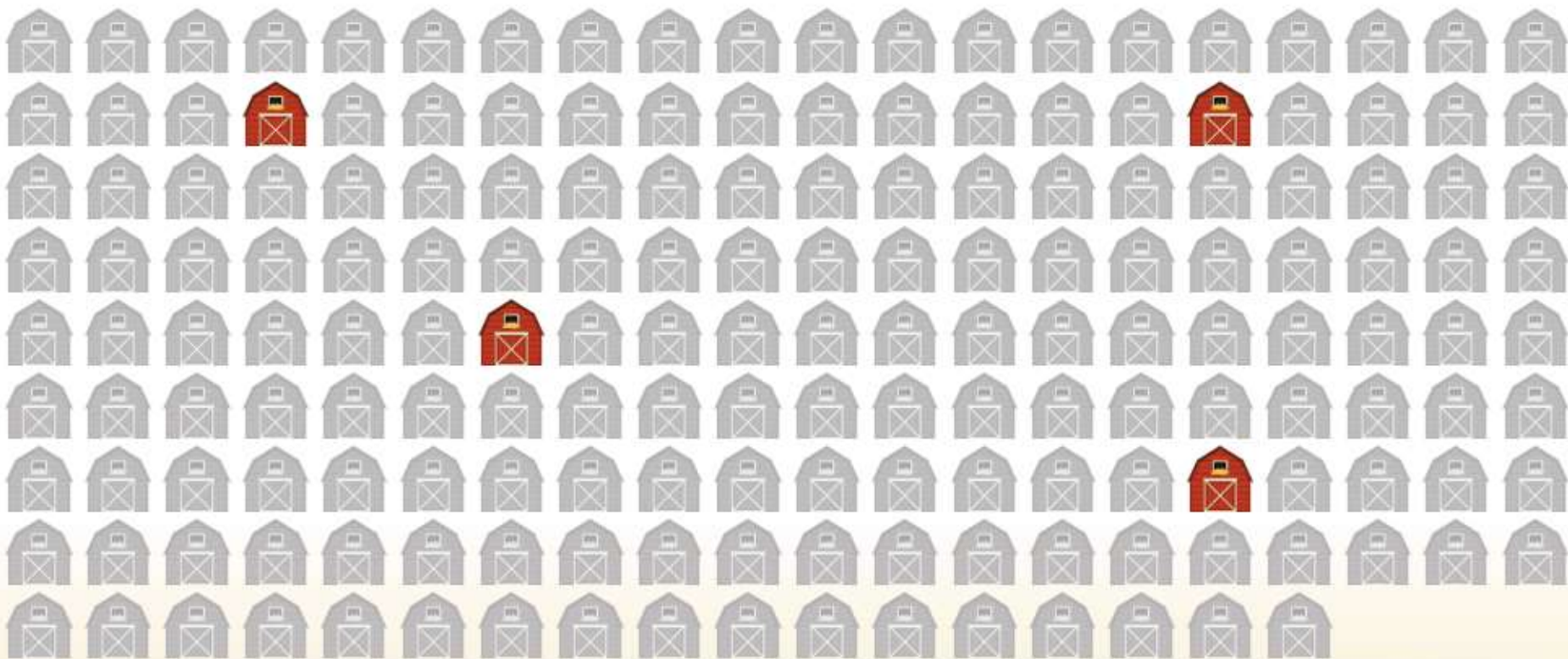
Category

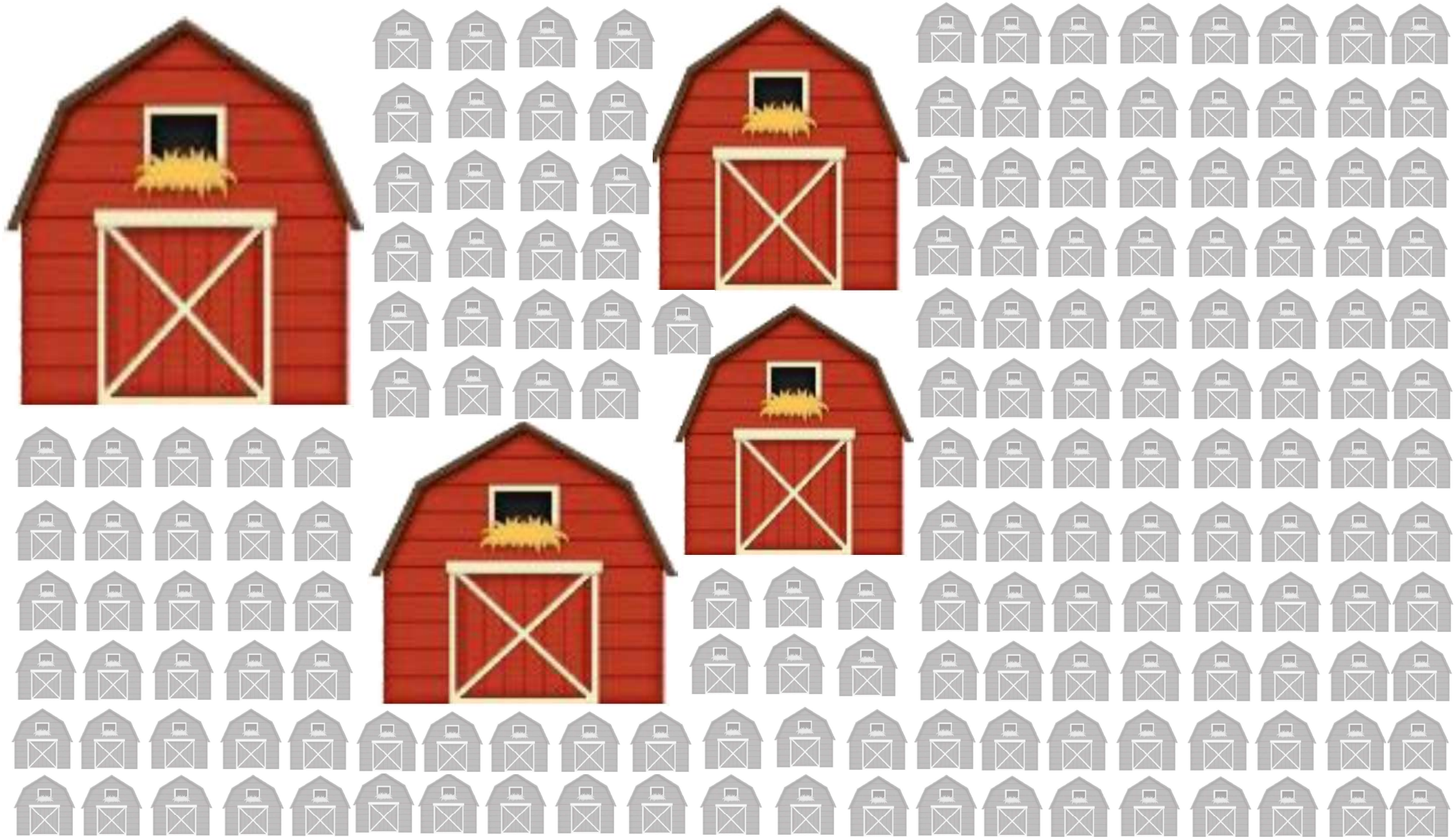
of Directors meeting resulted in a position being remodeled facilities. We need to keep you up to date on a few other points about auditing and space matches.

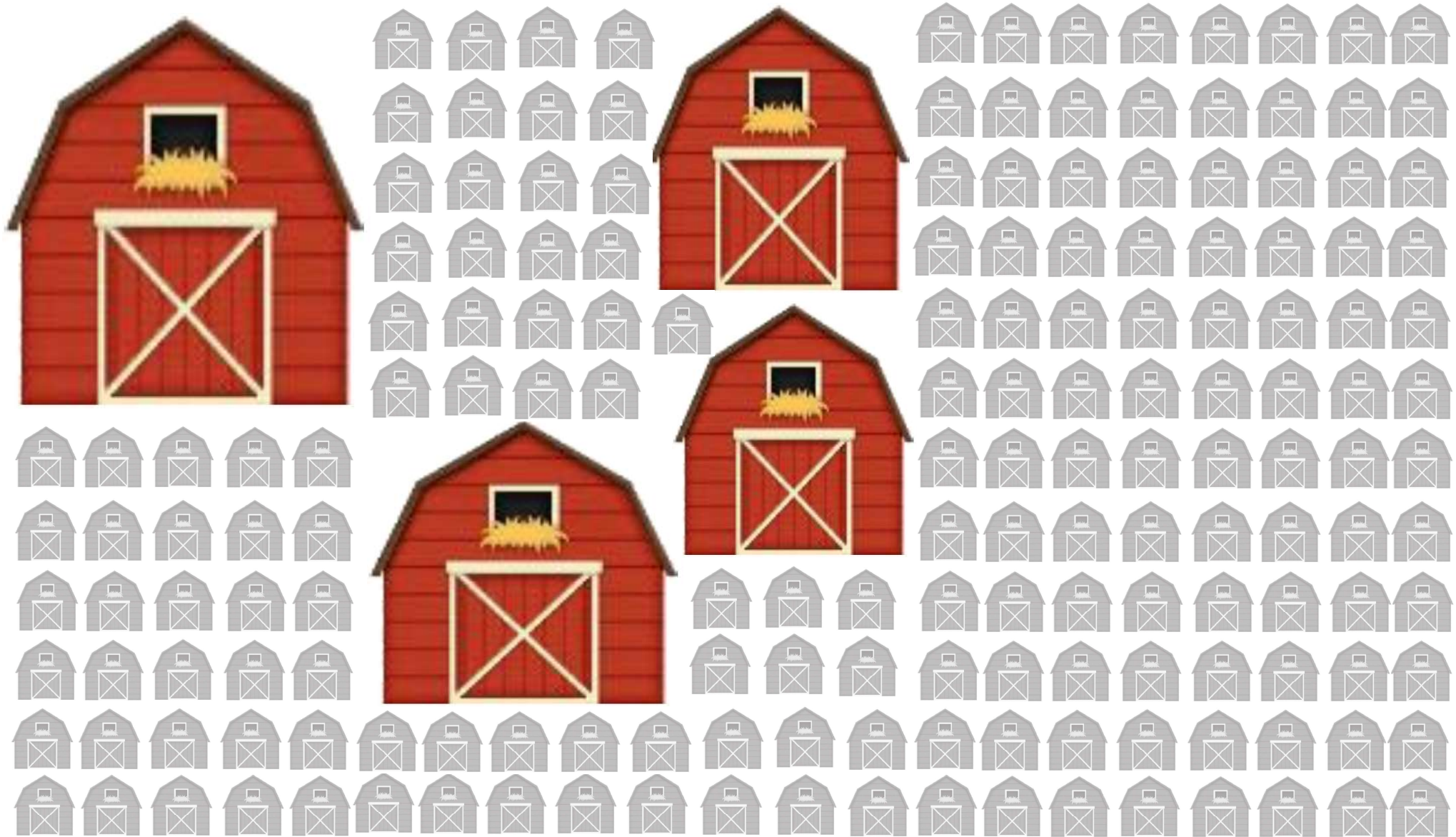
Plaintiff Ex. 180

Only 4 Producers Found To Be In The Conspiracy

Remaining: **4 Producers**







Defendants Are Responsible for the Consequences of Their Actions

5. **Cost Recovery**: It is disappointing to hear from some of you that your customer is unwilling to pay your increased costs to meet these guidelines. We still recommend that you only put the **Animal Care Certified** logo on the cartons of companies willing to pay the costs.

You should not get discouraged. We believe with 225 million hens committed to the program and the trading of AHC (Animal Husbandry Certified) eggs, and the flock reduction that has begun to take effect, egg prices have and will continue to reflect the impact of these welfare guidelines.

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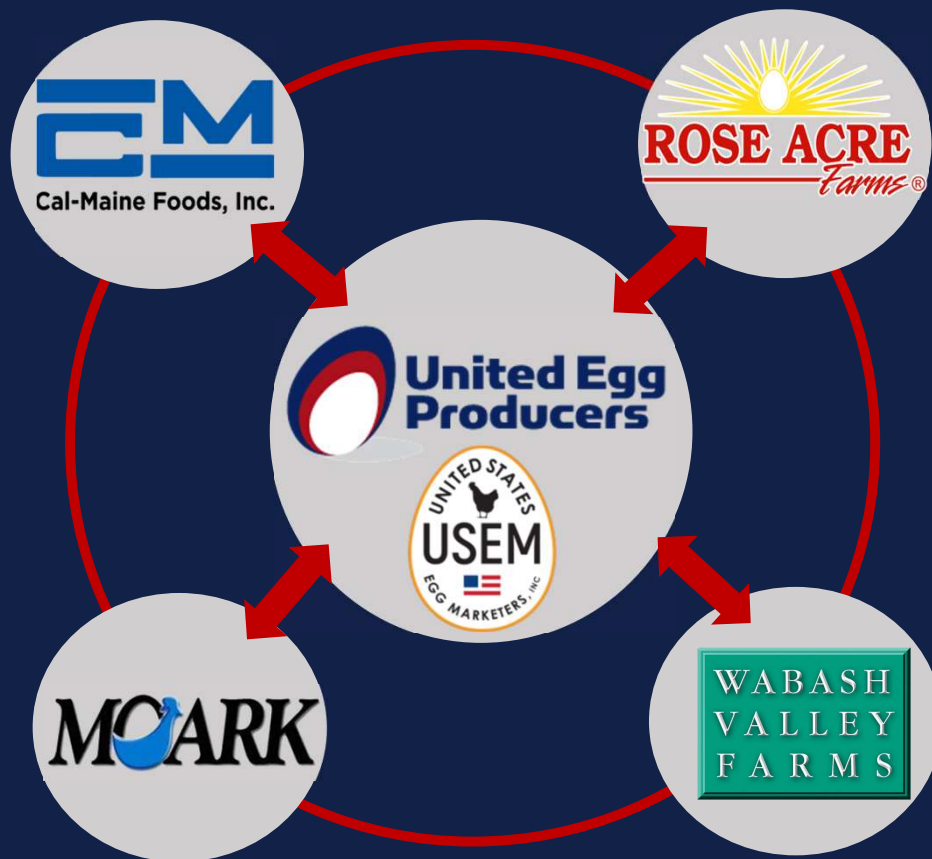
Animal Care Certified Companies

Category

of Directors meeting resulted in a position being remodeled facilities. We need to keep you up to date on a few other points about auditing and space matches.

Plaintiff Ex. 180

The Conspiracy



Defendants Are Responsible for the Consequences of Their Actions

Backfilling – A Loophole of a Hangman’s Noose? **Editorial by: Al Pope**

A year later, and while the ACC program was never a supply management program, the “backfill” provision (in my opinion) is contributing or even causing some of the disorderly marketing and poor egg prices that we are currently experiencing. **Have we shot ourselves in the foot with this well intended provision?** Is it a “noose” that **s “strangling” the opportunity of enjoying, once again, the favorable prices** for our product we expected this fall?

Plaintiff Ex. 371

Defendants Are Responsible for the Consequences of Their Actions

Backfilling Cages

- From the summer of 2003 through the spring of 2004, the industry enjoyed very profitable prices.
- To take advantage of good prices – producers elected to back fill empty cages. This added several million hens to the nation's flock inventory and was a major reason we destroyed good prices.
- UEP Certified program then develops policy to prohibit backfilling cages. The market now reflects the benefits of that policy.

PEPA

"Egg

United Egg Producers - President

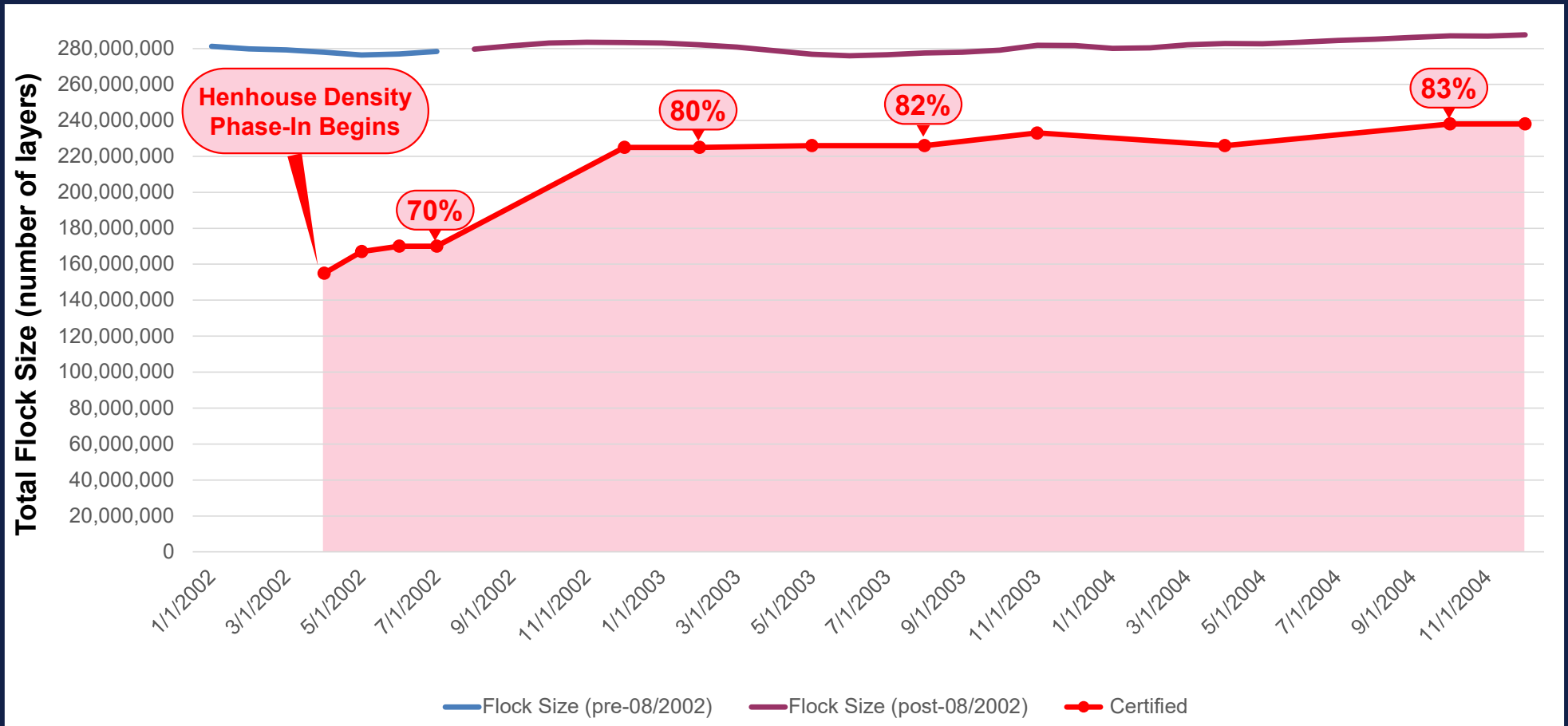
Plaintiff Ex. 788

Plaintiffs' Total Purchases and Overcharges (Backfilling Ban Specification Oct. 2004 through Dec. 2008)

	Purchases from Rose Acre and Wabash Valley	Overcharges
Kraft	\$70,803,605	\$10,548,781
Kellogg	\$15,088,100	\$2,497,923
General Mills	\$3,948,967	\$832,994
Nestle	\$6,577,046	\$521,718
Total:	\$96,417,718	\$14,401,416



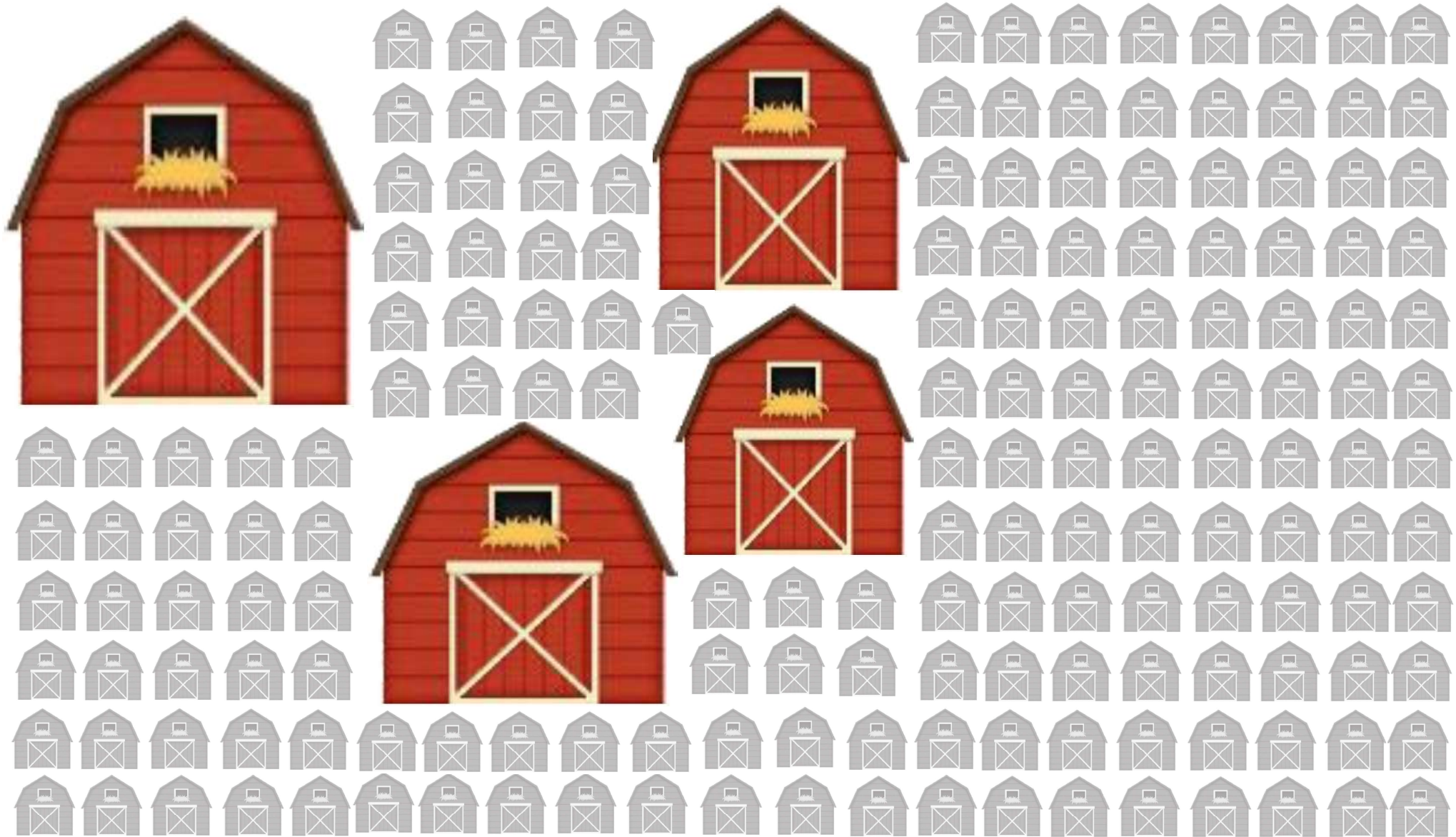
Certified and Total Flock Size 2002–2004



Source: Baye Rep. Ex. 11; Walker Decl. Ex. 1; Plaintiff Exhibits 203, 637, 824; Defendant Exhibit 991

Defendants Are Responsible for the Consequences of Their Actions

“An association cannot lawfully act to facilitate the *raising, stabilizing, or maintaining of prices* in the market in which its members compete with one another....”



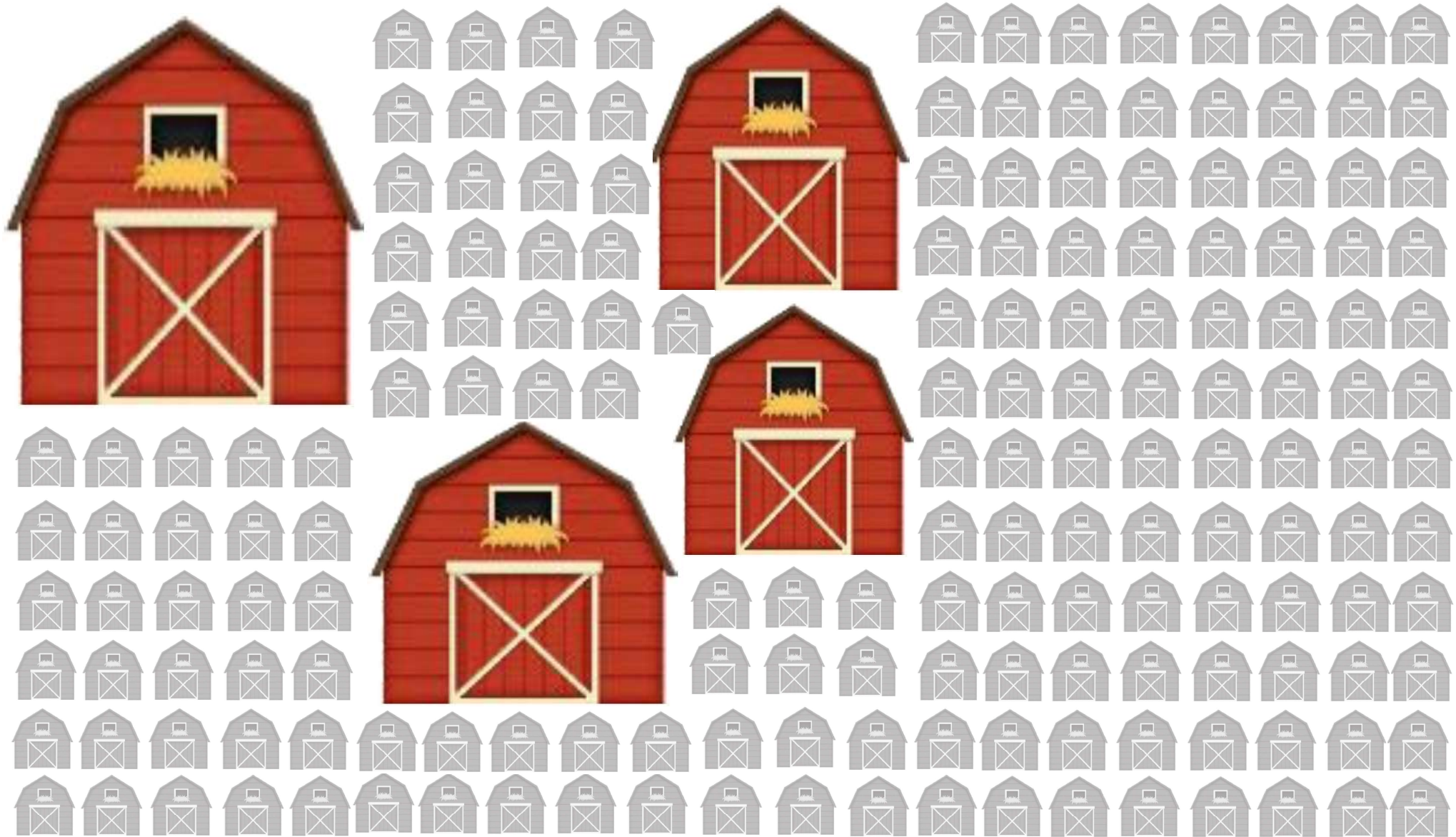
Defendants Are Responsible for the Consequences of Their Actions



Tr. 1988

Q. Mr. Baker, it wasn't until Cal-Maine reached an agreement with UEP and its competitors to put in place the certified program that you, Cal-Maine, decreased your henhouse density, correct?

A. Yes, sir.



Defendants Are Responsible for the Consequences of Their Actions

Backfilling – A Loophole of a Hangman’s Noose? Editorial by: Al Pope

A year later, and while the ACC program was never a supply management program, the “backfill” provision (in my opinion) is contributing or even causing some of the disorderly marketing and poor egg prices that we are currently experiencing. **Have we shot ourselves in the foot with this well intended provision?** Is it a “noose” that **s “strangling” the opportunity of enjoying, once again, the favorable prices** for our product we expected this fall?

Plaintiff Ex. 371

The Estimates of Damages are Conservative

- Excludes damages from exports and short-term measures.
- Estimates would be larger using a confidence level below 99%.
- The model uses the product associated with the *most elastic* demand (meaning price goes up *the least* when supply goes down) wherever the product purchased/priced is ambiguous.
- Estimates are larger using price effects from documentary record.

The Estimates of Damages are Conservative

2006 10-K	Small changes in production or demand levels can have a large effect on shell egg prices”
2007 10-K	“Small changes in production or demand levels can have a large effect on shell egg prices”
2008 10-K	“Small changes in production or demand levels can have a large effect on shell egg prices”
2009 10-K	“Small changes in production or demand levels can have a large effect on shell egg prices”
2010 10-K	“[A] 1% increase or decrease in industry supply will translate into a 7% corresponding change in shell egg prices.”
2011 10-K	“[A] 1% increase or decrease in industry supply will translate into a 7% corresponding change in shell egg prices.”
2012 10-K	“[A] 1% increase or decrease in industry supply will translate into a 7% corresponding change in shell egg prices.”


Plaintiff Exs. 336, 398, 444, 445, 683, 684, 750

Plaintiffs' Total Purchases and Overcharges (Main Specification Oct. 2004 through Dec. 2008)

	Purchases from Rose Acre and Wabash Valley	Overcharges
Kraft	\$70,803,605	\$18,329,288
Kellogg	\$15,088,100	\$4,605,380
General Mills	\$3,948,967	\$1,305,612
Nestle	\$6,577,046	\$1,156,262
Total:	\$96,417,718	\$25,396,542

Verdict Form

1. Plaintiffs seek nominal damages of \$1 for the part of the conspiracy involving the short-term measures (*i.e.*, early slaughter, early molting, and flock reduction). Do you award nominal damages to one or more Plaintiffs for the part of the conspiracy involving the short-term measures?

YES  NO _____

If the answer to the question is "YES," enter \$1 below.

If the answer to the question is "NO," enter \$0 below.

You must respond separately for each Plaintiff.

Kraft Foods Global	\$ <u>1</u>
The Kellogg Company	\$ <u>1</u>
General Mills	\$ <u>1</u>
Nestlé USA	\$ <u>1</u>

Verdict Form

2. Plaintiffs seek nominal damages of \$1 for the part of the conspiracy involving the exports as part of the USEM export program. Do you award nominal damages to one or more Plaintiffs for the part of the conspiracy involving the exports?

YES ☒ NO ☐

If the answer to the question is "YES," enter \$1 below.

If the answer to the question is "NO," enter \$0 below.

You must respond separately for each Plaintiff.

Kraft Foods Global	\$ <u>1</u>
The Kellogg Company	\$ <u>1</u>
General Mills	\$ <u>1</u>
Nestlé USA	\$ <u>1</u>

Verdict Form

3. Did Plaintiffs prove that they sustained damages as a result of the part of the conspiracy involving the UEP Certified Program (i.e., the cage space or henhouse density restrictions, and/or the restriction on backfilling of egg-producing hens)?

You must respond separately for each Plaintiff.

Kraft Foods Global

YES



NO

The Kellogg Company

YES



NO

General Mills

YES



NO

Nestlé USA

YES



NO

Verdict Form

4. What is the total amount of damages that you award to each Plaintiff for the part of the conspiracy involving the UEP Certified Program (*i.e.*, the cage space or henhouse density restrictions, and/or the restriction on backfilling of egg-producing hens)?

Include a dollar amount for one or more of the Plaintiffs only if you answered "YES" for that Plaintiff in response to Question #3.

Kraft Foods Global \$ _____

The Kellogg Company \$ _____

General Mills \$ _____

Nestlé USA \$ _____

Plaintiffs' Total Purchases and Overcharges (Main Specification Oct. 2004 through Dec. 2008)

	Purchases from Rose Acre and Wabash Valley	Overcharges
Kraft	\$70,803,605	\$18,329,288
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Nestle	\$6,577,046	\$1,156,262
Total:	\$96,417,718	\$25,396,542

Verdict Form

4. What is the total amount of damages that you award to each Plaintiff for the part of the conspiracy involving the UEP Certified Program (*i.e.*, the cage space or henhouse density restrictions, and/or the restriction on backfilling of egg-producing hens)?

Include a dollar amount for one or more of the Plaintiffs only if you answered “YES” for that Plaintiff in response to Question #3.

Kraft Foods Global	\$ <u>18,329,288</u>
The Kellogg Company	\$ <u>4,605,380</u>
General Mills	\$ <u>1,305,612</u>
Nestlé USA	\$ <u>1,156,262</u>